

Exhibits



12-30-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #7%

--TTA/B

**BEFORE THE TRIAL AND APPEAL BOARD
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

PUCCEL ENTERPRISES, INC.
Petitioner,

CONSOLIDATED

v.

GRIZZLY INDUSTRIAL, INC.
Respondent.

| | |
|-------------------------|--------------------------|
| Opposition No. 123,506 | Mark: GRIZZLY.COM |
| Cancellation No. 31,984 | Mark: GRIZZLY |
| Cancellation No. 32,024 | Mark: GRIZZLY |
| Cancellation No. 32,025 | Mark: GRIZZLY INDUSTRIAL |

GRIZZLY INDUSTRIAL, INC.'S MOTION TO COMPEL DISCOVERY

Grizzly Industrial, Inc. ("Grizzly") seeks to compel Pucel Enterprises, Inc. ("Pucel") to respond to and/or supplement its responses to certain interrogatories and requests for production of documents and things as set forth more fully hereinafter. This discovery was initially served over 15 months ago in August 2001. In many instances, Pucel did not provide information or documents but rather asserted that certain information would not be available without a protective order and certain documents and things would only be available for inspection at its Ohio facilities. Although the parties agreed to the form of the protective order in April 2002, Pucel has never adequately¹ supplemented its discovery or provided all promised documents for inspection.

STATEMENT OF FACTS

Pucel filed three petitions for cancellation and two notices of opposition in May 2001. Four of these actions were subsequently consolidated into the present case. In August 2001, before the actions were consolidated, Grizzly served interrogatories and document requests with respect to each mark at issue. This discovery was essentially identical in each of the actions, as was Pucel's response.

¹ On June 27, 2002, Pucel supplemented one of its responses to interrogatories by identifying an additional fact witness.

Pucel made two basic promises in response to Grizzly's discovery: (1) it would supplement its responses if a protective order were agreed to and (2) it had additional documents that could only be inspected at its Ohio facilities. Despite the agreed-to protective order and Grizzly's willingness to inspect these documents, neither of these promises has been properly fulfilled. In addition, as set forth below with reference to each of the disputed interrogatories and document requests, Pucel's responses are also inadequate.

As required by 37 CFR 2.120(e) and TBMP 523.02, copies of the interrogatories with answers, supplemental answers and objections are attached as Exhs. 1-5; copies of the requests for production and Pucel's proffer of production or objection to production are attached as Exhs. 6-9; and the brief description of documents or things that were not produced in response follows below as is a description of Pucel's inadequate responses to interrogatories.

A. INTERROGATORIES

Interrogatory No. 5(d). The identification of documents which relate to Pucel's knowledge of Grizzly's trademarks as "catalogs, various publications and websites" should be made with sufficient specificity that the documents can be identified.

Interrogatory No. 7. Pucel should identify the trade channels with more specificity. Pucel's response states only "Channels of trade – through distributors, dealers and end users, through distribution of catalogs, brochures flyers, internet web site and by direct contact with these distributors, dealers and end users." What kind of distributors, dealers and end users? To whom are the catalogs, brochures, and flyers sent?

Interrogatory No. 8. Pucel's explanation of "all methods of advertising and all types of media used to advertise and promote the products in connection with which Opposer uses the mark GRIZZLY" that it uses "[d]irectories, display ads in publications, internet web site, catalogs, brochures, flyers, photos" is inadequate. These materials should be described with specificity, including, for example, the names of the directories and publications; dates of each such directory, publication, catalog, brochure, flyer, or photo; size of ads; circulation of catalogs, brochures, flyers, and photos; number of hits on the web site each month since its creation; and the like.

Interrogatory No. 9. Pucel's refusal to provide its advertising and promotion costs prior to 1991 because they are "not readily available" is inadequate. If the information is available, it should be provided. TBMP 412.02.

Interrogatory No. 10. Pucel has not supplemented its response by providing the confidential information relating to gross annual dollar sales it referred to in its initial response.

Interrogatory No. 11. Pucel has not identified "the companies having GRIZZLY as part of their names," despite having acknowledged their existence. TBMP 419(9).

Interrogatory No. 12. All that Pucel has provided is the name of two companies, without explaining any of the details sought by this interrogatory. The response should include all documents (if any), identified by document control number, referred to in Pucel's response. Pucel has not provided a time for inspection and copying the additional documents referred to in response to this request. In addition, the response should comply with the rules, *i.e.*, names of parties, the jurisdiction, proceeding number, outcome, and the citation. TBMP 419(10).

Interrogatory No. 13. Pucel's October 1, 2001 description of "each instance of confusion, likelihood of confusion, mistake or deception" is inadequate. A narrative explaining what happened and the identities of the persons involved should be provided, rather than the cryptic shorthand used. Pucel has not provided a time for inspection and copying the additional documents referred to in response to this interrogatory.

Interrogatory No. 15. Pucel has not identified or provided a time for inspection and copying all the additional documents referred to in response to this interrogatory.

B. DOCUMENT REQUESTS

Pucel has failed its "duty to thoroughly search its records for all information properly sought in the request . . . " TBMP 412.02. Instead, it has, under pressure from Grizzly, proffered approximately 200 boxes or 80,000 to 100,000 documents in Cleveland, of which Pucel's counsel only "spot checked" one or two boxes. In fact, in a telephone conference with Pucel's counsel on Friday, December 13, 2002, before the inspection on Monday, December 16, 2002, Pucel's counsel stated that there would "probably" be irrelevant materials, "but I don't know because I haven't looked." Pucel's counsel also refused to allow inspection of the goods being sold under the trademarks while Grizzly's counsel was at Pucel's manufacturing facility in Cleveland, stating that they are in the catalog. In addition, Pucel has refused to allow adequate time to inspect the documents or, even, to allow Grizzly to copy the documents so they can be digested in the fullness of time. As it turned out, these two hundred boxes were forty years of

invoices. Although Pucel has asserted other relevant documents exist, it has not produced them nor allowed Grizzly to inspect them. Pucel should have produced these documents while Grizzly was in Cleveland.

The description of the materials not proffered in response to document requests follows:

Document Request No. 1. Pucel has not adequately identified (e.g., by box or location) the additional documents referred to in response to this request. Pucel has also not identified by document control number any of the documents allegedly produced in response to this request.

Document Request No. 2. Pucel has not adequately identified (e.g., by box or location) the additional documents referred to in response to this request. Pucel has also not identified by document control number any of the documents allegedly produced in response to this request.

Document Request No. 3. Pucel has not adequately identified (e.g., by box or location) the additional documents referred to in response to this request. Pucel has also not identified by document control number any of the documents allegedly produced in response to this request. Regardless of whether certain of the documents requested may be available from the PTO, Pucel has an obligation to produce relevant documents that are in Pucel's possession or control.

Document Request No. 4. Regardless of whether certain of the documents requested may be available from the PTO, Pucel has an obligation to produce relevant documents that are in Pucel's possession or control. Pucel's position appears to be that it has no other documents that relate to state or federal trademark registrations or applications for GRIZZLY and GRIZZLY BEAR SYMBOL besides those held by the USPTO.

Document Request No. 5. Pucel has not provided a privilege log. Pucel has also not identified by document control number any of the documents allegedly produced in response to this request.

Document Request No. 9. Pucel has not adequately identified (e.g., by box or location) the additional documents referred to in response to this request. Pucel has also not identified by document control number any of the documents allegedly produced in response to this request.

Document Request No. 11. Pucel has not identified or provided the confidential documents ("annual reports") referred to in Pucel's response to this request.

Document Request No. 12. Pucel has not identified or provided the confidential documents ("annual reports") referred to in Pucel's response to this request.

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Document Request No. 20. Pucel has not adequately identified (e.g., by box or location) the additional documents referred to in response to this request.

Document Request No. 21. Pucel has not adequately identified (e.g., by box or location) the additional documents referred to in response to this request.

Document Request No. 22. Pucel has not adequately identified (e.g., by box or location) the additional documents referred to in response to this request.

C. GOOD FAITH EFFORTS

Counsel for Grizzly has made a good faith effort since March 2002, both by conference and by correspondence, to resolve the issues presented, but has been met with unfulfilled promises and refusals to identify the requested materials and supplement the interrogatory responses. See the attached Statements of Good Faith Efforts and accompanying exhibits thereto.

Pucel has been delaying its responses to Grizzly's discovery requests, including the following:

- On the afternoon of December 6, 2002, almost two months after proceedings resumed and less than a month before discovery is set to close, Pucel offered December 16 and 17, 2002 as dates on which Grizzly's counsel can inspect documents (approximately 200 boxes) at Pucel's facility, allowing Grizzly just five business days to plan.

- Pucel declined to provide any alternate dates stating that “discovery was about to close” obviously implying that Pucel is not agreeable to extending discovery. Now that Pucel has Grizzly’s documents, Grizzly’s supplemental responses to Pucel’s discovery, and has taken Grizzly’s deposition, Pucel is attempting to subvert Grizzly’s efforts to discovery Pucel’s information and documents.
- On December 16, 2002, Pucel’s counsel admitted it has additional, responsive documents, but did not proffer them for inspection while Grizzly was in Cleveland, and also refused to allow inspection of the products on site.
- On December 13, 2002, Pucel’s counsel admitted that he had inspected less than 1% of the materials that he was finally putting forth as responsive to Grizzly’s document requests and that there would “probably” be irrelevant material.
- The two hundred boxes inspected on December 13, 2002 consisted only of invoices.
- Pucel’s counsel has ignored the remainder of its admitted obligations to supplement its discovery responses.
- While Grizzly copied and delivered thousands of documents to Pucel, Pucel refused to even allow Grizzly to use Pucel’s photocopier and only grudgingly offered the use of its heated office to inspect one (of the two hundred) boxes at a time.
- Since May 2002, Pucel has repeatedly promised to supplement its discovery responses, but at the filing of this motion has not done so other than allowing Grizzly to inspect the invoices on December 16, 2002.
- Grizzly served additional interrogatories, document requests, and requests for admission on Pucel on August 5, 2002 (prior to receiving the Board’s stay order), and to date, Pucel has not responded nor even indicated when it will respond.

- 5
- Since May, 2002, Pucel has promised to produce confidential documents and information.

Despite the existence of the protective order, Pucel has not done so.

Such tactics should not be condoned.

ARGUMENT

Pucel's document production is admittedly inadequate. Both its responses and its counsel concede the existence of other, relevant, unproduced documents and things. Pucel's refusal to inspect the boxes in order to identify the materials that are relevant to Grizzly's discovery requests is a clear violation of the rules requiring the party to "thoroughly search its records for all information properly sought in the request, and to provide such information to the requesting party." TBMP 412.02. Grizzly seeks to preclude Pucel from relying on any information from its records that Pucel failed to identify with particularity. TBMP 412.02. Likewise, Pucel's repeated failure to supplement its interrogatory responses, although it acknowledged its need to do so, should result in barring Pucel from relying on any of the information sought by these interrogatories. In the alternative, Pucel should be compelled to provide the information and documents requested.

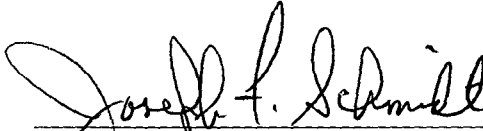
REQUESTED RELIEF

Pucel has repeatedly promised to cooperate in discovery, but then failed, without explanation, to actually provide any of the information promised. Accordingly, the Board should enter an order either barring Pucel's reliance on any information or documents it has not provided to Grizzly or compelling Pucel to fully answer, without objection, Grizzly's interrogatories and document requests within fifteen (15) days from the date of such order. *See Envirotech Corp. v. Compagnie Des Lampes*, 219 U.S.P.Q. 448, 450 (TTAB 1979); *Crane Co. v. Shimano Indus. Co., Ltd.*, 184 U.S.P.Q. 691, 692 (TTAB 1975).

CONCLUSION

For the foregoing reasons, Grizzly's motion should be granted.

December 27, 2002

A handwritten signature in black ink, appearing to read "Joseph F. Schmidt", written over a horizontal line.

Joseph F. Schmidt

Lisa C. Childs

MICHAEL BEST & FRIEDRICH LLC

401 North Michigan Avenue, Suite 1900

Chicago, IL 60611

(312) 661-2100

(312) 222-0818 (fax)

Attorneys for Respondent

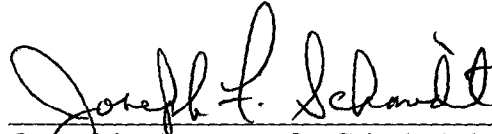
Grizzly Industrial, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing GRIZZLY INDUSTRIAL, INC.'S MOTION TO COMPEL DISCOVERY was served on

Charles R. Rust
Kenneth L. Mitchell
Woodling, Krost and Rust
9213 Chillicothe Road
Kirtland, OH 44094

via first class mail, postage prepaid, this 27th day of December, 2002.



One of the Attorneys for Grizzly Industrial, Inc.

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**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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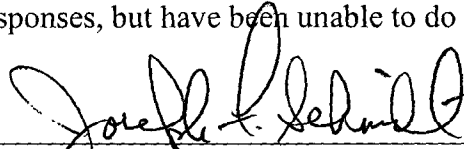
STATEMENT OF GOOD FAITH EFFORT

I, Joseph F. Schmidt, attorney for Grizzly Industrial, Inc. ("Grizzly") state the following of my own personal knowledge in support of Respondent's Motion to Compel Discovery:

1. On December 6, 2002, November 15, 2002, October 29, 2002, August 2, 2002, April 10, 2002, and March 8, 2002, I, or my co-counsel, sent letters via facsimile to Pucel's counsel requesting that Pucel's discovery responses be supplemented. (Exhs. A, B, C, D, E, and F).
2. Pucel initially responded by agreeing to provide such supplements in May, 2002. (Exh. G). Pucel's counsel further left telephone messages in which he confirmed his intent.
3. In addition, I had a face-to-face conference with Pucel's counsel on Wednesday, November 20, 2002 after the 30(b)(6) deposition of respondent, at which time Pucel's counsel again promised to supplement Pucel's discovery.
4. Nonetheless, Pucel has failed to properly supplement its discovery.
5. Instead, on December 9, 2002, Pucel offered the inspection of 200 boxes of documents at petitioner's place of business, which I discovered upon inspection by my co-counsel contained only invoices and account receivable information.
6. Pucel's counsel admitted that there were additional relevant documents but that such documents were not being produced for inspection at that time.

7. I have made a good faith effort, by conference and by correspondence, to resolve Pucel's failure to supplement its discovery responses, but have been unable to do so.

December 27, 2002



Joseph F. Schmidt
MICHAEL BEST & FRIEDRICH LLC
401 North Michigan Avenue, Suite 1900
Chicago, IL 60611
(312) 661-2100
(312) 222-0818 (fax)

Attorney for Respondent
Grizzly Industrial, Inc.

S:\CLIENT\205670\9004\C0172353.1

December 6, 2002

VIA FACSIMILE

Mr. Kenneth L. Mitchell
Woodling, Krost and Rust
Kirtland Office Complex
9213 Chillicothe Road
Kirtland, OH 44094

Re: Grizzly Industrial v. Pucel Enterprises

Dear Ken:

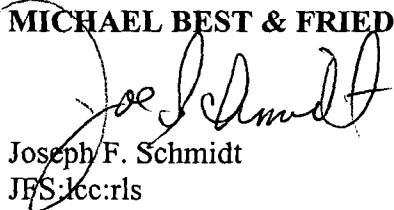
Further to our letters of November 15, 2002, October 29, 2002, August 2, 2002, April 10, 2002, and March 8, 2002, you have not supplemented Pucel's responses to Grizzly's initial discovery. Nor have you provided any dates certain on which you will supplement Pucel's responses, many of which you have acknowledged are incomplete, despite your most recent promise to do so in our face-to-face conference Wednesday, November 20, 2002.

We believe that we have made good faith efforts, both by conference and by correspondence, but have reached an impasse with you, in large part because you either promise materials that are never provided or simply ignore our requests.

Nonetheless, even though Pucel's supplemental responses are more than six (6) months overdue, we will defer filing a motion to compel until December 13, 2002. If, prior to that date, you provide dates certain as to when you will supplement Pucel's discovery responses, including dates when documents can be inspected at Pucel's offices, we will not file the motion to compel.

Sincerely,

MICHAEL BEST & FRIEDRICH LLC


Joseph F. Schmidt
JFS:lcc:rls

cc: Lisa C. Childs



November 15, 2002

VIA FACSIMILE

Mr. Kenneth L. Mitchell
Woodling, Krost and Rust
Kirtland Office Complex
9213 Chillicothe Road
Kirtland, OH 44094

Re: Grizzly Industrial v. Pucel Enterprises

Dear Ken:

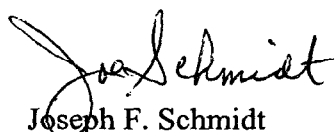
Notwithstanding your agreement to do so, we note that you have not supplemented Pucel's responses to Grizzly's initial discovery, as requested in our letters of March 8, 2002, April 10, 2002, August 2, 2002 and October 29, 2002.

As you know, the TTAB reactivated the case on October 15, 2002. Moreover, the TTAB's order suspending proceedings specifically noted that it did not toll the time to respond to discovery served prior to the filing of the motion to compel.

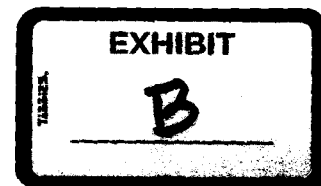
In view of our repeated requests, and since Pucel's supplemental responses are more than six (6) months overdue, we expect that no later than November 22, 2002, you provide dates certain as to when you will supplement Pucel's discovery responses, including dates when documents can be inspected at Pucel's offices.

Sincerely,

MICHAEL BEST & FRIEDRICH LLC



Joseph F. Schmidt
JFS:lcc:rls



**MICHAEL BEST
& FRIEDRICH LLC**
Attorneys at Law

www.mbf-law.com

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Chicago, Illinois 60611
Telephone (312) 222-0800
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Author: Joseph F. Schmidt
Writer's Direct Line: (312) 661-2135
Email: jfschmidt@mbf-law.com

Offices in:
Milwaukee, Wisconsin
Madison, Wisconsin
Manitowoc, Wisconsin
Waukesha, Wisconsin
Lehigh Valley, Pennsylvania

October 29, 2002

VIA FACSIMILE
With Confirmation via U.S. Mail

Mr. Kenneth L. Mitchell
Woodling, Krost and Rust
Kirtland Office Complex
9213 Chillicothe Road
Kirtland, OH 44094

Re: Grizzly Industrial v. Pucel Enterprises

Dear Mr. Mitchell:

This is in response to your telephone call of October 22, 2002, in which you indicated that you wanted to take Mr. Balolia's deposition on November 25, 2002. Mr. Balolia is not available on November 25, but is available on November 20, 2002. **Let me know as soon as possible if you want to proceed on November 20 so I can ask Mr. Balolia to keep that date available.**

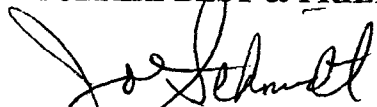
Regardless of the date on which the deposition is taken, let me know where you plan on taking the deposition, the starting time, and the name of the local firm that you may use.

Now that these proceedings are active again, let me know when you plan to supplement Pucel's discovery responses as requested in our letters of March 8, 2002, April 10, 2002, and most recently, August 2, 2002, including the confidential information and documents that you withheld pending entry of the protective order, dates when we can inspect and copy Pucel's documents in Ohio, and supplemental responses to various interrogatories and document requests as set forth in my letter of August 2, 2002.

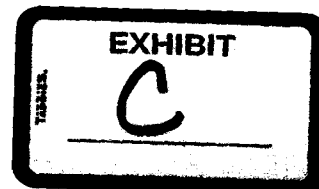
I look forward to your response.

Sincerely,

MICHAEL BEST & FRIEDRICH LLC


Joseph F. Schmidt
JFS:mmr

cc: Lisa Childs



August 2, 2002

VIA FACSIMILE
With Confirmation via U.S. Mail

Mr. Kenneth L. Mitchell
Woodling, Krost and Rust
Kirtland Office Complex
9213 Chillicothe Road
Kirtland, OH 44094

Re: Grizzly Industrial v. Pucel Enterprises

Dear Mr. Mitchell:

Further to our letters of April 10 and March 8, 2002, we are in receipt of Pucel's Supplemental Response to Applicant's First Set of Interrogatories in both Opposition No. 123,136 (BEAR POWER) and the consolidated proceedings, which you had promised to supplement by May 10. Each of the Supplemental Responses (served June 27, 2002) supplement *only* Pucel's response to Interrogatory No. 19 by identifying certain fact witnesses.

As set out in our April 10 and March 8 letters, Pucel's written responses themselves acknowledged that they were deficient in view of

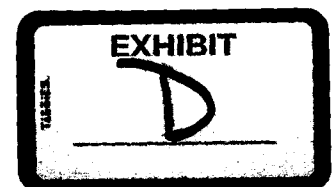
(a) certain confidential information that was being withheld and

As the Protective Order has been agreed to, it is inappropriate for Pucel to continue to withhold the confidential information.

(b) certain documents that were available only for inspection and copying at Pucel's offices.

We are still awaiting your setting the date for inspection and copying of the additional documents. (See, for example, our May 17, 2002 letter.)

In addition, Pucel's responses to Grizzly's document requests failed to identify any documents with particularity. In view of the scanty and disorganized production, we expect that you will supplement each request as set out below.



Mr. Kenneth L. Mitchell
August 2, 2002
Page 2

We identify the following outstanding issues with respect to *each* of the five sets of Grizzly's interrogatories and document requests which were not addressed by the June 27 Supplemental Responses.

INTERROGATORIES

Interrogatory No. 5(d). The identification of documents which relate to Pucel's knowledge of Grizzly's trademarks as "catalogs, various publications and websites" should be made with sufficient specificity that the documents can be identified.

Interrogatory No. 7. Pucel should identify the trade channels with more specificity. Pucel's response states only "Channels of trade – through distributors, dealers and end users, through distribution of catalogs, brochures flyers, internet web site and by direct contact with these distributors, dealers and end users." What kind of distributors, dealers and end users? To whom are the catalogs, brochures, and flyers sent?

Interrogatory No. 8. Does Pucel plan to rely on its explanation of "all methods of advertising and all types of media used to advertise and promote the products in connection with which Opposer uses the mark GRIZZLY" that it uses "[d]irectories, display ads in publications, internet web site, catalogs, brochures, flyers, photos"?

Interrogatory No. 9. Is it your position that Pucel does not intend to provide its advertising and promotion costs prior to 1991 because they are "not readily available"?

Interrogatory No. 10. Pucel has not yet supplemented its response by providing the confidential information relating to gross annual dollar sales it referred to in its initial response.

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Interrogatory No. 12. All that Pucel has provided is the name of two companies, without explaining any of the details sought by this interrogatory. Please identify by document control number all documents (if any) referred to in Pucel's response. Pucel has not provided a time for inspection and copying the additional documents referred to in response to this request. In addition, please supplement this response so that it complies with the rules, *i.e.*, names of parties, the jurisdiction, proceeding number, outcome, and the citation.

Interrogatory No. 13. Does Pucel intend to provide any additional description in response to this interrogatory or to rest on its October 1, 2001 description of "each

Mr. Kenneth L. Mitchell

August 2, 2002

Page 3

instance of confusion, likelihood of confusion, mistake or deception"? Pucel has not provided a time for inspection and copying the additional documents referred to in response to this request.

Interrogatory No. 15. Pucel has not provided a time for inspection and copying all the additional documents referred to in response to this interrogatory.

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August 2, 2002

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Document Request No. 22. Pucel has not provided a time for inspection and copying the documents referred to in this request.

Please confirm or clarify by return facsimile by providing a date certain by which we can expect your substantive responses on these issues.

Sincerely yours,

MICHAEL BEST & FRIEDRICH LLC



Lisa C. Childs

LCC:bms:rls

cc: Joseph F. Schmidt

S:\CLIENT\205670\9004\CD125670.1

April 10, 2002

VIA FACSIMILE

Kenneth L. Mitchell, Esq.
Woodling, Krost and Rust
Ohio Savings Plaza
1801 East Ninth Street, Suite 1520
Cleveland, OH 44114

Re: Pucel Enterprises, Inc. v. Grizzly Industrial, Inc.
Consolidated Opposition Nos. 123,506 and 123,136

Dear Ken:

Enclosed is a draft Protective Order By Consent which incorporates your requested changes. Please return the signed Order and we will submit it to the Trademark Trial and Appeal Board.

Now that you have agreed to the protective order, and further to my letter of March 8, 2002, please let us know when you expect to produce the confidential documents and serve the supplemental interrogatory responses referred to in Pucel's initial responses to Interrogatory No. 10, and Document Request Nos. 11, 12.

We identify the following other outstanding issues in each of Pucel's responses to Grizzly's five sets of document requests and interrogatories.

In response to Interrogatory No. 11, we request that Pucel identify the "companies having GRIZZLY as part of their names."

In response to Request for Production Nos. 1, 13, 18, 20, 21, 22, and 23 (as well as several other document requests incorporating Pucel's response to Request No. 1), Pucel stated that other responsive documents "will be produced at the Pucel offices in Cleveland, Ohio for inspection and possible copying." We would like to arrange a time for such inspection and copying.



**MICHAEL BEST
& FRIEDRICH LLC**
Attorneys at Law

Kenneth L. Mitchell, Esq.

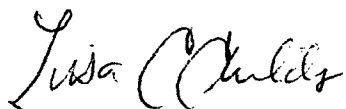
April 10, 2002

Page 2

With respect to Request for Production No. 5, we look forward to Pucel's privilege log.

Sincerely yours,

MICHAEL BEST & FRIEDRICH LLC



Lisa C. Childs

LCC/rls

Enclosure

cc: Joseph F. Schmidt

**MICHAEL BEST
& FRIEDRICH LLC**
Attorneys at Law

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March 8, 2002

Kenneth L. Mitchell, Esq.
Woodling, Krost and Rust
Ohio Savings Plaza
1801 East Ninth Street, Suite 1520
Cleveland, OH 44114

Re: Pucel Enterprises, Inc. v. Grizzly Industrial, Inc.
Consolidated Opposition Nos. 123,506 and 123,136

Dear Ken:

Further to Pucel's response to Grizzly's document requests and interrogatories in which Pucel indicated that certain "confidential business information" would be produced by Pucel "subject to a suitable protective order," we enclose a draft Protective Order for your review and signature.

Please let us know when you expect to produce the confidential documents and supplemental interrogatory responses.

Sincerely yours,

MICHAEL BEST & FRIEDRICH LLC



Lisa C. Childs

LCC/rls

Enclosure

cc: Joseph F. Schmidt

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EXHIBIT

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May 3, 2002

Joseph F. Schmidt
Michael Best & Friedrich LLC
401 N. Michigan Avenue
Suite 1700
Chicago, Illinois 60611-4274*Via Fax: 312-661-0029*Re: Our Dockets 8041; Opposition No. 123,136; and,
Consolidated Opposition and Cancellations, No. 123,506;
Discovery Matters

Dear Joe:

I have reviewed the voluminous documents that you have produced. Document nos. 1-175 represent file histories. Documents nos. 177- 4693 represent catalogs of Grizzly Industrial, Inc. and its predecessor Grizzly Imports, Inc. Documents nos. 4694-8651 represent advertisements of Grizzly Industrial and its predecessor.

I do not believe that you have responded to our document requests in writing as required other than the production of the voluminous documents. Would you please respond to our document requests in writing and would you please identify which documents respond to which requests. If there are documents to be inspected, please advise immediately and we will make arrangements for the inspection and copying at your client's Bellingham (or other) facilities.

Would you send us the responses to the interrogatories and responses to our requests immediately so that we may use them to prepare for the deposition(s) of your client. We note your letter dated March 4, 2002 and would like to take the discovery deposition(s) of your client in Bellingham, Washington, beginning June 3, 2002 at 9 am. Alternatively, and, preferably, we would like to take the deposition(s) of your client beginning June 17, 2002 at 9 am. We don't know how many days we will need for the 5 proceedings, 4 of which are consolidated until we have your discovery responses. If we do not receive the responses to our interrogatories and requests to enable our preparation for the deposition, we will have to extend discovery. If we cannot agree as to the duration of the deposition(s) (which we will most likely notice under Fed. R. Civ. P. 30(b)(6)), we

EXHIBIT**G**

Woodling, Krost and Rust

Mr. Joseph Schmidt, Esq.

May 3, 2002

Page 2

will file a motion for additional time under Fed. R. Civ. P. 30(d)(2) and 26(b)(2).

In regard to Lisa Childs' March 8, 2002 and April 10, 2002 letters, we will supplement our responses to your interrogatories on Friday, May 10, 2002. You may inspect additional documents at our client's facilities in Cleveland, Ohio on May 16, 2002.

We would like to again thank you and Lisa Childs for your cooperation and professionalism in this matter. I look forward to meeting you both personally. If you have any questions, please call.

Very Truly Yours,

Woodling, Krost and Rust



Kenneth L. Mitchell

KLM/krm

c: Mr. Anthony Mlakar



12-30-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #70

**BEFORE THE TRADEMARK TRIAL
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

PUCEL ENTERPRISES, INC.
Petitioner,

CONSOLIDATED

v.

GRIZZLY INDUSTRIAL, INC.
Respondent.

| | |
|-------------------------|--------------------------|
| Opposition No. 123,506 | Mark: GRIZZLY.COM |
| Cancellation No. 31,984 | Mark: GRIZZLY |
| Cancellation No. 32,024 | Mark: GRIZZLY |
| Cancellation No. 32,025 | Mark: GRIZZLY INDUSTRIAL |

STATEMENT OF GOOD FAITH EFFORT

I, Lisa C. Childs, attorney for Grizzly Industrial, Inc. ("Grizzly") state the following of my own personal knowledge:

1. On December 13, 2002, I had a teleconference with Pucel's counsel regarding the inspection of 200 boxes of documents at Pucel's manufacturing facility on December 16 and 17, 2002.

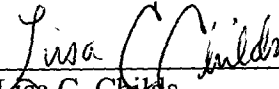
2. In this teleconference, Pucel's counsel refused to allow inspection of any of its products purportedly sold under its trademarks.

3. Pucel's counsel also stated that there would "probably" be some irrelevant material, "but I don't know because I haven't looked."

4. Pucel's counsel admitted that only two boxes of the two hundred had been "spot-checked".

5. I have made a good faith effort, by conference and by correspondence, to resolve the issues presented with Pucel's counsel and have been unable to reach agreement.

December 20, 2002



Lisa C. Childs
MICHAEL BEST & FRIEDRICH LLC
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Chicago, IL 60611
(312) 661-2100
(312) 222-0818 (fax)

Attorney for Respondent
Grizzly Industrial, Inc.

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